No. 87-1824

Supreme Court, U.S.
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In The Supreme Court Of The United States

OCTOBER TERM 1987

BRIAN SCOTT SKRIPICK,

Petitioner,

v.

STATE OF OHIO,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS FOR LUCAS COUNTY, OHIO

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On Behalf of Petitioner

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QUESTION PRESENTED

Is the burden on the State to prove in a suppression hearing that a search conducted without a warrant and probable cause as an inventory was conducted to mandatory police procedure, rules, regulations, ordinances, or statutes that leave the officers no discretion to conduct the search and to determine its scope?

IN THE SUPREME COURT
OF THE UNITED STATES

FOR THE OCTOBER TERM 1987

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF
LUCAS COUNTY, OHIO

To The Honorable, The Chief Justice
and Associate Justices of the
Supreme Court of the United States:

Brian Scott Skripick, the Petitioner herein, prays that a Writ of Certiorari issue to review the judgment of the Court of Appeals of Lucas County, Ohio, entered on October 16, 1987, in State of Ohio v. Brian Scott Skripick, C.A. No. L-87-041, for which the Ohio Supreme Court denied certiorari or review on February 10, 1988, Case No. 87-2054.

The Petitioner was stopped on an anonymous CB radio report that his automobile was involved in an auto

accident[1] in another police jurisdiction. Petitioner was arrested for an outstanding bad check warrant, and his passenger was directed out of the car and directed to leave the city. A police sergeant subsequently searched the vehicle trunk at the scene and discovered a few baggies of marijuana. At a motion to suppress hearing, there was no evidence introduced of any rules and regulations of the City of Maumee requiring that the vehicle be impounded, and no rule or regulation that all impounded vehicles be searched, leaving the officer no discretion in the matter. The trial court explicitly found that there was no rule or regulation shown covering the impoundment or inventory search and issued a written opinion granting the motion to suppress. The Court of

[1] No automobile accident was ever discovered.

Appeals, upon appeal by the State, reversed the motion to suppress ignoring the express finding of the trial court and the lack of proof of any rule or regulation in the record. Petitioner argued in the Court of Appeals that Colorado v. Bertine, 479 U.S. 93 L.Ed. 2d 739, 107 S. Ct. (1987) was dispositive of the requirement on the state to show rules and regulations giving the officers no discretion in impounding and conducting an inventory search.

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OPINIONS BELOW

The Court of Common Pleas of Lucas County, Ohio, the trial court, issued a written decision of its findings and conclusions in granting the Motion to Suppress, which appears in Appendix to this petition, page App. 1. The Court of Appeals of Lucas County, Ohio, issued a decision and judgment entry in overruling the trial court's motion to suppress which appears in the Appendix at page App. 28 The Supreme Court of Ohio declined to review the decision of the Court of Appeals in a one sentence entry which appears in the Appendix at page 48

JURISDICTION

The judgment of the Supreme Court of Ohio was entered on February 10, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

The trial court stated at page 10 in regard to inventory procedures:

> "...As to turnover of the car, there was sketchy, if conflicting testimony adduced as to some procedure; but as to the method and scope of the search, there was no such testimony and there is no evidence such a policy even exists (contract this evidentiary dearth with the detailed Vermillion, South Dakota standard police procedure and report form which were before the court in Opperman, supra, at 380--see especially footnote (6). The inescapable conclusion is that the Skripick vehicle was not searched in furtherance of nor in accordance with any standard Maumee police procedure."

The Court of Appeals, ignoring this determination of the trial court and the requirement in Colorado v. Bertine, supra, said at page 8:

> "The record is without evidence indicating that the search was performed other than pursuant to standard procedures of the Maumee

> Police Department. Admittedly, the record is silent as to whether the standard inventory search procedures of the Maumee Police Department actually exist in written form."

The record was also silent as to whether standard inventory procedures existed at all in the Maumee Police Department. The question thus presented is:

Is the burden on the State to prove in a suppression hearing that a search conducted without a warrant and probable cause as an inventory was conducted to mandatory police procedures, rules, regulations, ordinances, or statutes that leave the officers no discretion to conduct the search and to determine its scope.

CONSTITUTION INVOLVED

This case involves the Fourth and Fourteenth Amendments to the Constitution

of the United States.

STATEMENT OF THE CASE

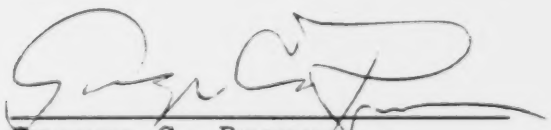
The motion to suppress hearing was very brief with the State only presenting two witnesses. The entire transcript of the proceedings constitutes 36 pages, and it has been included in the Appendix to clearly show that the record contains no evidence of any mandatory inventory procedure, rules, etc., of the Maumee Police Department. The trial court's finding of fact was entirely appropriate, and the Court of Appeals had no basis to reverse such finding and to reverse the trial court.

REASON FOR GRANTING THE WRIT

This court has in Colorado v. Bertine, supra, clearly established the Fourth Amendment requirement upon the State to show that inventory searches conducted as an exception to a warrant

and probable cause are conducted solely due to a mandatory policy, rule or regulation, etc., and that the officers have no discretion in conducting the search or its extent. The Colorado v. Bertine case upheld the inventory search because the mandatory procedures had been shown. Upholding a police search often does not send an effective message to state courts as to the necessary minimum requirements for a valid search. This case is appropriate to show that the minimum requirements have not been met. Petitioner requests that this Court summarily reverse the Court of Appeals of Lucas County, Ohio, with the citation of the Colorado v. Bertine decision.

Respectfully submitted,
ROGERS & GODBEY CO., LPA



George C. Rogers

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served via First Class Mail of same to Anthony J. Pizza, Lucas County Prosecutor, Lucas County Courthouse, Adams & Erie Streets, Toledo, Ohio 43604, on this 7th day of April, 1988.

ROGERS & GODBEY CO., LPA

George C. Rogers

IN THE COURT OF COMMON PLEAS,
LUCAS COUNTY, OHIO

STATE OF OHIO,	*	Case No: CR86-6942
-vs-	*	
BRIAN SCOTT SKRIPICK,	*	OPINION AND JUDGMENT ENTRY
Defendant.	*	

This cause is before the court pursuant to the motion of the defendant to suppress a quantity of marijuana recovered from the locked trunk of defendant's motor vehicle during the course of a so-called "inventory" search. A hearing was held on December 22, 1986, and both the State of Ohio and the defense submitted post-hearing briefs for the court's consideration. Several aspects of the stop and arrest of the defendant, as well as the search of his vehicle, bear close analysis. A review of the facts adduced will help frame the issues.

In the very early morning hours of November 1, 1986, Officer Boggs of the Maumee Police Department was on a routine patrol, monitoring his radio. The Maumee Police Department Dispatcher relayed a transmission picked up in turn from the Toledo Police Department Dispatcher. The Toledo report quoted an unconfirmed Citizens Band radio transmission just picked up from an unidentified van driver. The gist of the C.B. transmission cited by Toledo was that a dark car bearing out-of-state license plates had been involved in a hit-skip/pedestrian accident, and was headed out the Anthony Wayne Trail toward the contiguous municipality of Maumee. The thrice-relayed report heard by Officer Boggs indicated that the dark car was being trailed by a brown van (driven by the C.B.'er) and it gave the car's license number. Neither police

dispatch confirmed that any such pedestrial accident had occurred. And, in fact, no such accident had taken place.

Within a few minutes of hearing the transmission, Officer Boggs saw two vehicles in tandem on the Trail which matched the descriptions given. The Officer fell in behind; he confirmed the car's out-of-state plate number; he turned on his car siren and flasher; and he pulled the car over. The van, whose driver had a clear view of the police stop of the dark car, inexplicitly drove off into the night and permanent obscurity.

Officer Boggs approached the car, and asked the defendant-driver about his route of travel and his activities in Toledo; the answers were, apparently, unremarkable. Officer Boggs then made an inspection of the exterior of

defendant's vehicle; that inspection revealed no fresh marks on defendant's car--in short, nothing to suggest a recent accident. Notwithstanding, Officer Boggs then requested and got identification from both the defendant-driver and his passenger, and this information was called in for a routine check. In a few minutes, the Maumee dispatcher conveyed the news that there was an outstanding bad check warrant on the defendent in Toledo.

The defendant and his passenger were ordered out of the vehicle and both were frisked. The frisk turned up a marijuana cigarette in the defendant's possession (no charge was filed), and nothing of note in the passenger's possession. Officer Boggs called for a tow on defendant's car, testifying at the suppression hearing that the

passenger couldn't take defendant's car, because the Maumee Police Department's standard police procedure prohibited giving the car to a non-owner, other than a spouse. Officer Lindsay, who provided virtually immediate backup to Officer Boggs at the site, testified that he couldn't authorize turning the car over to the passenger, because he was intoxicated. Interestingly, it was disclosed that the Maumee Police Department offered to drive the passenger to the municipality limits and drop him off--interesting because it was by now pushing 3:00 A.M., and Officer Lindsay claims the passenger was intoxicated.

Thus an "inventory" search was conducted of the defendant's vehicle. The search was conducted by a Sgt. Zink of the Maumee Police Department. Sgt. Zink did not testify at the hearing, but

Officer Lindsay stated that the Sergeant checked the interior of the vehicle finding nothing. According to Officer Lindsay, Sgt. Zink emerged from the vehicle, paused, and then said, "...let's check the trunk...do we have the keys?" The keys were recovered from the ignition and the trunk was opened. The trunk contained several packages and a clear plastic bag containing what appeared to be marijuana, and it is that substance which forms the basis of the charge herein, and which defendant now seeks to suppress.

In reviewing these facts and the inferences they compel in this case, it is the conclusion of the court that the so-called inventory search of defendant's locked trunk was unlawful and that, therefore, the fruits thereof must be suppressed. This conclusion rests on

two independent bases--one having to do with the stop and detention of Mr. Skripick and his vehicle, and one having to do with the subsequent trunk search itself. It is the opinion of this court that Officer Boggs lacked both jurisdiction and basis for the stop and detention of the Skripick vehicle. Further, it is the opinion of this court that Sgt. Zink lacked sufficient reason to extend the inventory search to defendant's locked trunk, even assuming a valid reason to stop and detain; and, finally that this incursion into defendant's trunk was not done in furtherance of <u>any</u> standard Maumee police procedure.

There is no serious question in this case that the stop pf the defendant's vehicle was made by Officer Boggs without a warrant for a supposed offense, committed outside his presence and,

indeed, outside Maumee's jurisdiction. Further it is clear that the stop in this case had nothing to do with any erratic driving of the defendant immediately prior to the stop. On this basis, assuming the supposed offense was a misdemeanor, Officer Boggs had no authority to stop and detain the defendant. State v. Wallace, 50 Ohio App. 2d 78 (Ct of App. Franklin County, 1978); Cincinnati v. Alexander, 54 Ohio St. 2d 248 (1978); and State v. VanBerg, 44 Ohio Misc. 11 (Toledo Mun. Court, 1975). Officer Boggs testified he was afraid a felony might be involved (aggravated vehicular homicide?), though even that night this fear was the rankest form of speculation and supposition. No confirmation--official or otherwise--was forthcoming during the entire period that any accident took place. And, as we all

learned no accident had taken place. The C.B. report was false.

The stop and detention of the defendant cannot be defended on the basis of probable cause, either--a proposition so obvious that it hardly bears discussion. No one knew of the informant's reliability or even his identity; there was no confirmation of the incident itself; the informant apparently fled; and, the car bore no signs of having been in an accident.

Thus, the legality of the stop and detention devolves to an analysis of whether there was a reasonably articulable suspicion sufficient to justify the seizure of Mr. Skripick and/or his car. The prosecutor urges consideration of Terry v. Ohio, 392 U.S. 1 (1968) in this regard, especially as Terry is applied to vehicles in Adams v. Williams, 407

U.S. 143 (1972); U.S. v. Brignoni-Price, 422 U.S. 873 (1974); and U.S. v. Cortez, 449 U.S. 441 (1981). Defense counsel relies on State v. Chatton, 11 Ohio St. 3d 59 (1984) and State v. Frye, 21 Ohio App. 3d 133 (1985), noting the Chatton proposition that, without a reasonable and articulable suspicion of a law violation, an officer may not stop and request a license. These cases, in the view of the court, are all reconcilable and as applied to the case at bar simply require a determination of whether all of the facts and events leading up to the stopping and continued detention of the Skripick vehicle provided a reasonable and an articulable suspicion of a law violation on the part of the defendant or his vehicle.

In the court's view, the simple answer to this question is "no", there

was no reasonable and articulable suspicion. The C.B. report itself was thrice-relayed; nothing was known of the informant; and no corroborating data was given which might have lent credence to the report (e.g. a Toledo transmission such as "...by the way, unit #1 reports pedestrian injured at Front and Main--driver left scene"). It is reasonably likely that a pedestrian accident, especially a serious one, would receive some kind of official confirmation or, at least, notation within a short period of time, even at 2:30 A.M. Here, some significant time had elapsed from the supposed incident. Three sequential radio reports had been given, presumably with some time in between. Officer Boggs testified that five minutes passed from the Maumee transmission until he sighted the vehicles. And, it took several

additional minutes for Officer Boggs to fall in behind the vehicles, check the plate number, turn on the siren and pull the car over. Still, no confirmation had been given; and Officer Boggs did not follow up with his dispatcher to see if there was further information available.

We now know to a certainty there would have and could have been no confirmation of a hit-skip/pedestrian accident because none had taken place. Of course, Officer Boggs did not know that November 1st and had to base his evaluation of the unconfirmed, anonymous and thrice relayed hearsay C.B. report on other facts and inferences. It is at least arguable that the bizarre and dubious nature of the report was sufficient to sustain a reasonable and articulable suspicion. Officer Boggs, however, was privy to other crucial facts which

strongly indicated the report was bogus: first, as noted, ten minutes or more had passed without further police word or confirmation; second, the supposedly public-spirited C.B.'er chose to flee rather than establish his reliability by an offer of his assistance or even just his name and address; and, third, the Skripick vehicle bore no evidence of having been in an accident, as Officer Boggs confirmed in his inspection of the car's exterior--an inspection completed prior to the demand for identification and the request for a record check.

One can speculate, I suppose, as to the motives of the sly and shy samaritan in the brown van. Was his report his idea of a practical joke? Was it a response to a real or imagined traffic slight by the Skripick vehicle? Was it deliberate payback for some other

personal dispute? Or was it simply random maliciousness? Regardless, it is clear the report was false when given. And, as seen, this court is persuaded that the attenuated nature of the report itself together with the demonstrably contrary facts cited fairly screamed "hoax".

As noted previously, the decision to suppress the evidence in the case at bar is based independently and severably on the unlawful stop-detention, and on the improper inventory search. Parenthetically, it can also be noted that, even assuming a valid stop, there may have been no need for an inventory search, because the defendant's passenger was ready, willing and arguably able to take the vehicle after discovery of the bad-check warrant made defendant's arrest inevitable.

Both officers who testified, however, would not permit the passenger (a Mr.

Bunce) to take charge of the vehicle, albeit for differing reasons. Officer Boggs testified that the Maumee police department had a standard policy which proscribed the turnover of a vehicle in this situation to one other than a title-owner of the vehicle in question, or the spouse of a title-owner. Officer Lindsay made no reference to this supposed standard policy (though clearly Bunce was neither title-owner nor spouse), and instead testified that Bunce was too drunk to be entrusted with the car. With regard to the Lindsay testimony, he did state that Bunce was "walking alright"; he did not perform field tests on Bunce; nor did he arrest him. In fact, as noted, the officers offered to drive Bunce to the municipality limits where he would be dropped off to fend for himself. Bunce demurred, and was then given "on-foot"

instructions to an area diner some blocks away and he left the scene. Remarkably, the Maumee police at the hearing were able to offer no information about Bunce (the only other person they knew had been privy to earlier activities); in fact, they barely recognized his name when quizzed on cross-examination. Also, no copy of the supposed Maumee procedure on vehicle turn-over was presented to the Court, and no overall statement thereof was elicited.

Before analyzing the purported inventory search of the Skripick locked trunk, it bears reiterating that this court views the stopping and continued detention of the defendant and his vehicle as improper--especially after it was absolutely clear the car had <u>not</u> been involved in any recent accident, and obvious that the supposed informant had fled. Notwith-

standing, it is the view of this court that even as to the narrow question of the inventory search alone, the Maumee police acted beyond the law, and beyond their authority.

Because, even if it is assumed arguendo that the Skripick vehicle was lawfully within the custody of the Maumee P.D. up through the point when the warrant news was relayed, and even if it is assumed that Maumee had no alternative but to retain and inventory the vehicle in conjunction with a tow, the fact is there are still limits on an inventory search. South Dakota v. Opperman, 428 U.S. 364 (1976).

Opperman, supra (which involved the inventory search of an unlocked glove compartment) articulates the parameters and purposes of an inventory search. Opperman clearly establishes that the

search's method and scope must conform to an existing aritculated standard police procedure for the municipality in question. Opperman, supra, at 374, 375. Further, it is therein set forth that the search must be reasonable--though this normally may be inferred from conformity with the local department's standard procedure--and the search may not be investigatory in nature. Opperman, supra, at 372, 373. Most notably, Opperman isolates the three purposes of an inventory search: 1) to protect an owner's property in police custody; 2) to protect the municipality against claims for lost or stolen property; and, 3) to protect the police from danger. Opperman, supra, at 369.

When analyzing this case within the Opperman framework, it is difficult indeed to justify the extension of the

search into the locked trunk of the Skripick vehicle. There was no indication that morning that any property of the defendant needed greater protection than would be afforded by a locked trunk. There was no suggestion that anything remarkable or of significant value reposed in the trunk. And, there was certainly no hint of any lurking danger. The cumulative weight of these facts calls into question the reasonableness of the extension of the search to include the trunk. And, of course, the reasonableness can neither be inferred nor presumed by its conformity to a standard Maumee police procedure in effect on November 1, 1986 dealing with the method and scope of an inventory search. As to turnover of the car, there was sketchy, if conflicting testimony adduced as to some procedure; but as to the method and scope

of the search, there was no such testimony and there is no evidence such a policy even exists (contrast this evidentiary dearth with the detailed Vermillion, South Dakota standard police procedure and report form which were before the court in Opperman, supra, at 380--see especially footnote 6). The inescapable conclusion is that the Skripick vehicle was not searched in furtherance of nor in accordance with any standard Maumee police procedure. And it is equally clear that no extrinsic facts or circumstances gave the Maumee officers a reasonable basis for extending the search into the trunk. Based on Officer Lindsay's testimony in describing Sgt. Zink's search in this case, it is clear that the decision to search the trunk was not part of some regularized procedure, but rather an afterthought.

In view of the facts of the search, and its afterthought nature, it is a fair inference in fact that the incursion into the trunk was investigatory in nature.

As noted above, Opperman, while definitive in many respects in the area of inventory searches, dealt with fact pattern involving an unlocked glove compartment. There are two significant cases which deal with inventory searches of locked trunks which should be analyzed as they bear on the case at bar, specifically, State v. Robinson, 58 Ohio St. 478 (1979) and Cady v. Dombrowski, 413 U.S. 433 (1973).

In Robinson, the defendant was arrested for a serious traffic offense and taken into custody. While awaiting a tow truck, the arresting officer took a standard Cincinnati P.D. inventory form and began a methodical search of

the vehicle, including the locked trunk. All standard procedures were followed, and marijuana was discovered in a plastic bag in the trunk. Of course, there are obvious similarities to the case at bar; but there are also salient and crucial differences. First, the stop in Robinson was righteous and routine in sharp contrast to the bizarre facts of the Skripick stop. But more importantly for present purposes, it is clear that Robinson conformed to Opperman dictates because the Robinson inventory search meticulously followed existing, articulated and standard departmental procedure. Here it is almost certain that no such standard policy exists--certainly none was introduced and none was mentioned--and it is beyond question that no such policy was followed in determining to extend the search into the trunk.

Moreover, as we have seen earlier, there was no extrinsic, reasonable basis for the incursion into the trunk.

Interestingly, Robinson cites Cady. In Cady, a vehicle was towed following a serious accident which disabled the vehicle's driver, an off-duty Chicago policeman. Existing departmental regulations required that officer to carry his weapon twenty-four hours a day. An inventory search of the locked trunk in Cady produced crucial evidence. But it was found that the Cady search was conducted in complete conformity with a then-existing standard police procedure. Moreover, and significantly, the investigating police in Cady were found to have a reasonable basis for believing that a weapon was still in the car, and thus potentially available to potential thieves or vandals. Again, both of these factors

are missing in the case at bar: Maumee had no standard procedure, and there wasn't even a pretext that any procedure was being followed in effecting the trunk portion of the search; and, there was no reasonable basis for the extension of the search.

In conclusion, it is clear that the law dictates that the evidence in this case recovered from defendant's locked trunk on November 1, 1986 must be suppressed. There was no warrant and no offense committed within Officer Boggs' presence to justify the stop. The stop was extra-jurisdictional as it related back to the offense in question, however imaginary it was. There was no probable cause to believe an offense had taken place. And, there was no reasonable and articulable suspicion that either the defendant or his vehicle were subject

to seizure. This court feels that the unconfirmed and anonymous nature of the report, standing alone, was sufficiently questionable to vitiate any reasonable and articulable suspicion, though here there was more. Indeed, when the dubious report is combined with the independent facts known to Officer Boggs prior to the request for identification (i.e. no corroboration; an anonymous and now fleeing informant--if he was, in fact, the informant; and affirmative proof gleaned from the car itself that no accident had occurred involving that car, at least), then all vestiges of the suspicion are eradicated and it is clear everyone has been had. As to the search of the trunk, it is obvious that the search was not justified by the extrinsic facts available, nor was it carried out in conformity to any regularized procedure.

In the opinion of the court, then, suppression of the evidence recovered from defendant's trunk is compelled by existing law. Likewise, suppression is mandated by sound public policy. To accept reports such as the one in question at face value, with no corroboration and in defiance of countervailing evidence, would be to subject citizens to police stops based on rumor, hoax and whim. To place the aegis of the court on the sloppy and unjustified Maumee police procedures in this case would broaden the notion of inventory searches to include an investigative function, it would invite official lawlessness, and it would seriously erode substantial and long-standing rights.

JUDGMENT ENTRY

Based upon the courts findings pursuant to hearing, the arguments of

counsel, and the post-hearing briefs of counsel, the Court finds that defendant's motion to suppress evidence is well taken, and the same is hereby granted. It is therefore ORDERED that all evidence seized as a result of the search of defendant's trunk on November 1, 1986 be, and it hereby is suppressed.

_____ /s/ William J. Skow
DATE JUDGE WILLIAM J. SKOW

"

COURT OF APPEALS OF OHIO, SIXTH DISTRICT

COUNTY OF LUCAS

C. A. NO. L-87-041

State of Ohio	APPEAL FROM
APPELLANT	LUCAS COUNTY COMMON PLEAS
-VS-	COURT
Brian Scott Skripick	NO. CR 86-6942
APPELLEE	DECISION AND JOURNAL ENTRY

DATE October 16, 1987

This matter is before the court of the granting of appellee's motion to suppress evidence. The facts of the case are as follows.

On November 1, 1986 at approximately 2:30 a.m. appellee, Brian Scott Skripick, was driving south on a section of State Route 24 located within the municipality of Maumee when he was stopped by Officer Robert Boggs of

the Maumee Police Department. Boggs stopped appellee because appellee's vehicle appeared to be the vehicle described by a dispatch received less that five minutes earlier from the Maumee Police Department. The dispatch describing the vehicle was relaying infromation from the Toledo Police Department that the particular vehicle travelling towards Maumee was believed to have struck a pedestrian in Toledo. The information from Toledo was based on an anonymous report from an operator of a citizens' band radio. The alleged accident was unconfirmed by the Toledo police. Upon stopping appellee, it is unclear from the record as to what exactly next occurred. It is sufficient at this point of our inquiry to conclude that in close proximity of time Officer Boggs requested forms

of identification from appellee and his passenger, performed a rudimentary "perimeter check" of appellee's vehicle, and questioned appellee about his recent whereabouts. Boggs communicated to the Maumee police dispatcher the identification information received from the two men. The dispatcher reported back that there was an outstanding warrant for the arrest of appellee. Boggs thereupon arrested appellee and requested a tow truck for appellee's vehicle.

Appellee's vehicle was searched before it was towed away. The search extended into the rear storage space area of the "hatchback" styled vehicle where a quantity of marijuana was discovered. Appellee was indicted soon thereafter for trafficking in marijuana pursuant to R.C. 2925.03(A)

(2). Appellee subsequently moved to suppress the evidence of the marijuana, claiming it should be excluded because it resulted from an unlawful stop and an unlawful subsequent search.

Agreeing that the evidence should be suppressed, the trial court stated that its conclusion rested on two bases:

> "***one having to do with the stop and detention of Mr. Skripick and his vehicle, and one having to do with the subsequent trunk itself. It is the opinion of this court that Officer Boggs lacked both jurisdiction and basis for the stop and detention of the Skripick vehicle. Further, it is the opinion of this court that Sgt. Zink lacked sufficient reason to extend the inventory search to defendant's locked trunk even assuming a valid reason to stop and detain; and, finally that this incursion into defendant's trunk was not done in furtherance of <u>any</u> standard Maumee police procedure."

Appellant, state of Ohio, filed a timely notice of appeal asserting the following sole assignment of error, reduced into subparts:

"THE TRIAL COURT ERRED IN GRANTING THE DEFENDANT'S MOTION TO SUPPRESS EVIDENCE.

"A. The Stop And Detention Of The Defendant's Automobile Was Legal Pursuant To The Dictates Of Terry v. Ohio And United States v. Hernandez.

"B. The Inventory Search Conducted By The Maumee Police After The Impoundment Of The Vehicle Was Legal."

Appellant's first assignment of error contends that the stopping and detaining of appellant were constitutional under the progeny of Terry v. Ohio (1968), 392 U.S. 1. We agree. Before proceeding to our discussion as to whether Boggs had a constitutional basis to stop and detain appellee, we first address the relevancy of statutory limitations on the authority to arrest to the applicability of the exclusionary rule. The Supreme Court of the United States first implemented the exclusionary rule in U.S. v. Weeks

(1914), 232 U.S. 383, wherein the court ruled that federal courts must exclude evidence seized by federal officers in violation of the Fourth Amendment. Mapp v. Ohio (1961), 367 U.S. 643, held the rule applicable to state criminal proceedings. The rule is designed to deter police officers from obtaining evidence through unreasonable searches and seizures, and protect judicial integrity by foreclosing the judicial forum to such evidence. Terry, supra, at 9. Application of the exclusionary rule is predicated on the finding of an unreasonable search and seizure. United States v. Calandra (1974), 414 U.S. 338, 347.

Nevertheless, the trial court found, and appellee argues, that Officer Boggs' lack of statutory jurisdiction

to stop appellee supports the application of the exclusionary rule. We disagree. Absent express statutory language to the contrary, the exclusionary rule will not be invoked as the remedy for a police violation of state statutory law, unless there is a distinct constitutional basis for suppression. See Kettering v Hollen (1980), 64 Ohio St. 2d 232. Our reading of the applicable sections of the Revised Code does not discern an express authorization of the remedy of suppression in the case sub judice. Moreover, we find that the lack of statutory jurisdiction to arrest does not constitute a distinct constitutional basis for suppression. Therefore, the issue of Officer Boggs' statutory authority to stop appellee is irrelevant to the applicability of the exclusionary rule.

Even if the stopping of appellee is per se contrary to Officer Boggs' statutory authority, this error does not justify the remedy of suppression.

Officer Boggs' stopping appellee's vehicle doubtlessly constitutes a "seizure" within the meaning of the Fourth Amendment. United States v. Hensley (1985, 469 U.S. 221, 226. Evidence arising from the seizure is inadmissible if the seizure is "unreasonable". Mapp, supra. The court below found that Officer Boggs' seizure of appellee was unreasonable under the Fourth Amendment. We disagree.

Officer Boggs stopped appellee for the purposes of investigation. Beginning with Terry v. Ohio, the Supreme Court of the United States has upheld certain warrantless investigative detentions based on suspicions

less than probable cause as not violative of the FourthAmendment's proscription against unreasonable searches and seizures. In particular, a "Terry-type" investigative stop will be upheld if it furthers a governmental interest and the stop is supported by a reasonable suspicion based on specific and articulable facts. Delaware v. Prouse (1979),440 U.S. 648, 653-655. The trial court found that Officer Boggs lacked specific and articulable facts necessary to support a reasonable suspicion. More specifically, the trial court found that an anonymous citizens' band report of an unverified "hit and run" traffic accident lacked the indicia of reliability to justify a reasonable suspicion of criminal activity.

The reasonableness of a seizure

requires a review of all the circumstances of the particular case. South Dakota v. Opperman (1976, 428 U.X. 364, 372. "The test of reasonableness cannot be fixed by per se rules; each case must be decided on its own facts." Id. (citations omitted.) Although Officer Boggs' suspiciion was indeed based on an anonymous and unverified citizens' band report, our review of the facts finds that a negligible amount of time passed before he observed the car described by the radio dispatcher. This scarcity of time precluded the possibility of corroboration. If it is true that Officer Boggs had relatively little information on which to base a reasonable suspicion, it is equally true that he had little time to act. But for his stopping the suspect vehicle, a

crime might go unsolved. In support of Officer Boggs' actions, we are reminded of the statement that "[t]he Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape." Adams V. Williams (1972), 407 U.S. 143, 145.

Under the exigent circumstances of this case, we find officer Boggs' stopping of appellee reasonable. The stop was in furtherance of the governmental interests in "solving crimes and bringing offenders to justice." Hensley, supra, at 229. Moreover, Adams, supra, tells us that "[a] brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo

momentarily while obtaining more information may be most reasonable in light of the facts known to the officer at the time." Id. at 146. We believe this passage properly applies to the facts in the case sub justice. Therefore, we find that under the time constrained circumstances of the present case, the anonymous and unverified citizens' band report provided sufficiently specific and articulable facts, forming a proper basis for a reasonable suspicion.

Finding the initial stop lawful, we now review the ensuing detention for constitutional defects. Once a "terry-type" stop is effected, investigation must be pursued diligently during a period of time that is temporary in duration. United States v. Place (1983), 462 U.S. 696, 709.

A review of the record finds no violation of this rule. Officer Boggs' actions in the case sub justice appear "*** reasonably related in scope to the circumstances which justified the interference in the first place." Terry, supra, at 20.

Based on the foregoing, we find that the stop and detention of appellee were lawful and they therefore provided no basis for the remedy of suppression. Accordingly, we find appellant's first assignment of error well-taken.

Appellant's second assignment of error contends that the search of appellee's vehicle which produced the marijuana was lawful. We agree. Once the warrant was verified and appellee was arrested, a tow truck was summoned for appellee's vehicle, presumably for purposes of impounding.

This course of action conformed to standard procedures of the Maumee Police Department. The trial court faulted the Maumee police for deciding to impound the vehicle instead of turning it over to appellee's passenger, who was "*** ready, willing, and arguably able to take the vehicle ***" Nevertheless, "[t]he real question is not 'what could have been achieved,' but whether the Fourth Amendment requires such steps." Illinois v. Lafayette (1983, 462 U.S. 640, 647. We find that the Fourth Amendment did not require turning the vehicle over to appellee's passenger. Moreover, we find the towing of appellee's vehicle a very reasonable response in view of the circumstances. The car was illegally parked. The putative owner of the vehicle was under arrest and

thus incapable of driving the vehicle away. Standard procedures of the Maumee Police Department prohibited turning the vehicle over to an individual not a titleholder of the vehicle or the spouse of such a titleholder. Therefore, we find that the towing of appellee's vehicle was lawful.

The vehicle was searched before it was towed. The area searched included the rear storage space of the "hatchback" styled vehicle. The United States Supreme Court "*** has consistently sustained police intrustions into automobiles impounded or otherwise in lawful police custody where the process is aimed at securing or protecting the car and its contents." Opperman, supra, at 373. Searches carried out for such administrative caretaking purposes are commonly referred to

as "inventory searches." See Opperman, supra. Inventory searches are justified by the need to protect the owner's property while it remains in police custody; to protect the police against claims or disputes over lost or stolen property; and to protect the police from potential danger. Id. at 369. (Citations omitted.) The Supreme Court of this state has interpreted Opperman to hold that "*** a routine inventory search of a lawfully impounded automobile is not unreasonable in the meaning of the Fourth Amendment when performed pursuant to standard police practice, and when the evidence does not demonstrate that the procedure involved is merely a pretext for an evidentiary search of the impounded automobile." State v. Robinson (1979), 55 Ohio St. 2d 478, 480.

Based on our readings of Opperman, supra, and Robinson, supra, and application of these decisions to the case sub judice, we find that the search of appellee's vehicle was lawful. The search occurred while the vehicle was in lawful custody of the Maumee Police Department. The search was aimed at securing or protecting the vehicle or its contents. As Officer Lindsey explained at the suppression hearing, "*** it's customary that we [conduct inventory searches], because we've had alot [sic] of problems where defendants later on say, 'well, I had this in my car and had this in my car and it's -- it's not there.'" The record is without evidence indicating that the search was performed other than pursuant to standard procedures of the Maumee Police Department.

Admittedly, the record is silent as to whether the standard inventory search procedures of the Maumee Police Department actually exists in written form. The trial court seemed to view this as a fatal defect. We do not share this belief. The United States Supreme Court has stated that conducting protective searches in accordance with standard procedures is but one factor "*** tending to ensure that intrustion [is] limited in scope to the extent necessary to carry out the caretaking function." Opperman, supra, at 375. (Citation omitted). Nevertheless, the court below appears to believe that mere failure to produce the standard inventory search procedures in written form is sufficient to render the inventory search unlawful. In review of the liberal language of

Opperman, supra, we find that the trial court's belief is unnecessarily erroneously narrow. Lastly, we find that the record is without evidence demonstrating that the procedure involved in the case sub judice is merely a pretext for an evidentiary search.

Based on the foregoing, we find that the search of appellee's vehicle was lawful and that it therefore provided no basis for the remedy of suppression. Accordingly, we find appellant's second assignment of error well-taken.

On consideration whereof, this court reverses the decision of the Lucas County Court of Common Pleas and this case is remanded to said court for further proceedings not inconsistent with this decision. Costs to abide final determination

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. See also Supp. R. 4, amended 1/1/80.

Peter M. Handwork, P.J.

PRESIDING JUDGE

John J. Connors, Jr., J.

JUDGE

Alice Robie Resnick, J.
CONCUR.

JUDGE

"

THE SUPREME COURT OF OHIO

COLUMBUS

State of Ohio,	:	1988 TERM
Appellee,	:	To wit:
v.	:	February 10, 1988
Brian Scott Skripick,	:	Case No. 87-2054
Appellant.	:	E N T R Y
	:	

Upon consideration of the motion for leave to appeal from the Court of Appeals for Lucas County, and the claimed appeal as of right from said Court, it is ordered by the Court that said motion is overruled and the appeal is dismissed sua sponte for the reason that no substantial constitutional question exists therein.

COSTS:

Motion Fee, $20.00, paid by Rogers & Godbey Co., L.P.A.

/s/ Thomas J. Moyer
THOMAS J. MOYER

Chief Justice

I, Marcia J. Mengel, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing order was correctly copied from the records of said Court, to wit, from the Journal of this Court.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, on this 10th day of February, 1988.

_____ CLERK

_____ DEPUTY

"

On Behalf of the State of Ohio:

George J. Conklin, Ass't Prosecutor

On Behalf of the Defendant:

George C. Rogers, Esq.

THE COURT: Call your first witness then, Mr. Conklin.

MR. CONKLIN: State would call Officer Boggs.

- - -

ROBERT BOGGS

Having been first duly sworn, as provided by law, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CONKLIN:

Q Please state your full name for the record.

A Officer Robert Boggs.

Q And where are you employed?

A City of Maumee, Division of Police.

Q And in what capacity do you serve with the city police division?

A Road patrolman.

Q And were you so employed in that capacity on November 1st of 1986?

A Yes, I was.

Q And what were your duties that

day?

A Patrolling the road.

Q And what were your hours of work that day?

A We were working the night shift, from 11:00 to 7:00 in the morning.

Q Okay. Were you working with anyone or were you working alone?

A Single car.

Q Okay. And you were working in an automobile, is that correct?

A Yes, sir.

Q If I could direct your attention to approximately 2:30 to 2:45 in the morning of November 1st of 1986, what, if anything, unusual occurred at that time, that date and time?

A We received a broadcast from our dispatcher that had been relayed to them, the best of my knowledge, from Toledo that a C.B. report had stated that an automobile was involved in a hit-skip of a pedestrian down in Toledo and believed to be heading out towards Maumee.

A description of the car was given, and the vehicle that had called this in was a van that was following the

car, talking on the C.B. to some police division down in Toledo.

Q All right. Do you know whether or not they gave any further description of the automobile?

A They gave a license plate number. The color of it was a dark vehicle. They stated it was a Chevrolet. I don't remember the numerical numbers right now, but it was an out-of-state plate, Illinois I believe.

Q Okay. Do you recall whether or not the van was described?

A The van was described as a darker two-tone, I believe.

Q Okay. In reference to "Headed out to you," what do you mean by that?

A They described it as going out Route 24, which is the Trail, a main junction from Toledo to Maumee, and Toledo had been dispatched on the call.

We were to be on the look-out for this vehicle, and I just happened to be about a street or so away from the Trail at the time of the broadcast, so I went over to the Trail area and shortly thereafter spotted the suspect car and van.

Q Okay. Did they indicate when this particular hit-skip may have occurred?

A It was in the broadcast that something just had happened.

Q Okay. And how long after you heard the broadcast did you observe the vehicles?

A I'd say a matter of minutes, probably five minutes or less.

Q Okay. And at that time, what did you see and where did you see it?

A I first noticed the suspect vehicle -- I had come down on Gibbs to the Trail heading towards Conant. The vheicle turned left onto Conant Street heading south, so I proceeded down there and was able to get in behind the suspect vehicle, ascertained that the match-up of the license plate given that I had written down was in fact the vehicle.

I called out I had the suspect vehicle spotted and was going to pull it over. The vehicle then proceeded to turn over into the 100 block of West Broadway, where it then came to a halt.

Q Okay. And is this all located

in Maumee, Lucas County, Ohio?

A That's correct.

Q Okay. And what about the van?

A The van, when I first saw it, I lost as far as contact with it once I saw the suspect vehicle. If it was behind me it was probably several vehicles behind or so.

I know that when I was out of the car and was talking with the defendant that a van did go past me, which I believe to be the same van.

Q Okay.

A I was unable to get a license plate of the van.

Q When you originally saw them, were they traveling in tandem?

A No, but I knew that there was a van behind the vehicle that had called out.

Q Okay. You recognized that van as being the one that was involved?

A It fit the general description, that's correct.

Q And what was the approximate time of this stop?

A Early morning hours; probably 2:30, 3:00 o'clock, somewhere in that

time frame. I don't recall exactly.
Q Okay. What happened after you stopped the vehicle?
"

"The Transcript continues from Page 6 to Page 8 there being no Page 7.
"

"
A I approached the vehicle, talked with the driver and advised the driver why I was there, what my purpose was, and tried to ascertain whether or not he had been down in Toledo, what his general direction of flight was, and I started looking at the outside of the vehicle to ascertain if there -- there was any damage.

I had asked for his identification and that of the subject that was with him and had proceeded doing identification checks on these people, as they did have out of -- out of plate --
Q Out-of-state plate?
A Out-of-state plates, yes.
Q Okay. And what happened next?
A At some point in time while

looking the vehicle over, the radio dispatcher ascertained that there was a warrant out for the defendant from Toledo courts, and I called out on the air for a backup at some point in time.

I don't remember the exact sequence, but I'm sure that once I knew that there was a warrant out I had repeated for a backup, and Officer Lindsay arrived on the scene within probably a matter of seconds or so of that request. I had the defendant out of the car. I could detect he had alcohol about his person. I talked to him about that, and once I knew that there was a warrant I proceeded to frisk him.

Q Okay. You conducted a frisk at that time?

A Once I knew there was a warrant on him, that's correct.

Q Okay. And after you conducted that frisk, what else happened?

A Okay. In the process of doing the frisk I discovered he was wearing two jackets, one over the other. I found an object called -- had the name "rush" on it, some type of a little cylindrical-type bottle that had the

name "Rush" on it.

He had a large amount of keys on him, I believe 19 in total. There was also a substance that appeared to be -- looked to be that of a joint on him, and I questioned him about that just briefly and advised that due to the fact that -- I think about this time I got the confirmation on the warrant from Toledo.

I explained to him the procedure that was going to be trans -- would be followed in regards to that, in regards to the warrant, and that the joint would be disposed of along with the Rush, and he had no objections to that.

Q Okay. And what happened next?

A When the information regards to the warrant on him came back and the information regards to his friend that was with him came back, his friend was found to be clean, no warrants or anything. He was advised to leave the area and get himself a cab and be on his way.

Q He did that?

A Which he did, he did leave the area.

Q What about the defendant and his

automobile?

A Once the warrant was confirmed a tow was called, I requested a tow for the automobile, and a tow was indicated to be in route. The defendant was then placed in custody. After the search and after the confirmation and that, he was -- he was placed into custody, and at that point in time I transported him to the station, where Toledo then came to pick him up.

Q Okay. Did you have any discussions with the defendant concerning contents of the automobile?

A No, sir. He did make a comment to the effect it was his son's birthday; that the reason he was in town was that he was separated from his boy and he was in on visitation to see his child and he had some packages for his son.

Q Okay. So he had some gifts in the car?

A That's correct.

Q Okay. And were you present at any time when the automobile was searched?

A No, I was not. I would have been with the defendant, transporting

him back to the station.

Q Okay. When you asked the individual for identification, did he produce a driver's license and registration?

A He produced a driver's license. I don't recollect the part about the registration offhand.

MR. CONKLIN: I have nothing further of this witness, Your Honor.

THE COURT: Mr. Rogers.

- - -

CROSS EXAMINATION

BY MR. ROGERS:

Q Officer Boggs, this call of the alleged hit-skip, did you ever do any follow-up, was there ever any hit-skip found to have taken place?

A Not that I'm aware of, no.

Q Okay. And when you arrested him you certainly weren't arresting him for a hit-skip, was that the case?

A I arrested him based on the Toledo warrants.

Q Okay. You arrested him on the warrants for bad checks?

A That's correct.

Q Okay. You actually didn't even have probable cause to arrest him on the hit-skip, did you, in your opinion?

MR. CONKLIN: Objection.

THE COURT: Sustained.

BY MR. ROGERS;

Q Now, I think I heard you say that the hit-skip was supposed to have taken place in Toledo, is that correct?

A That's correct.

Q Okay. And did you believe that to be a felony or misdemeanor?

MR. CONKLIN: Objection, Your Honor.

THE COURT: Overruled.

A I really didn't ascertain a tag on it per se one way or the other. It was a pedestrian was struck, so I didn't know if the pedestrian was alive or dead or not. I did not know at that point in time what I had.

Q Okay. Now, you were stopping this car based upon this C.B. call that had been made to Toledo about a hit-skip?

A That had been relayed to us, that's correct.

Q Okay. And did I understand correctly that the C.B. call was sup-

posed to have come from a brown van?
A That's how I understood it to be, that's corrrect.
Q And when you stopped this car the brown van didn't stop, it left the scene.
A That is correct, it went past my location and continued on.
Q Now, was the brown van in a position where obviously it would have seen you make the stop of this vehicle?
A Went directly past my location when I was out of the vehicle, that's correct.
Q And you had your lights flashing?
A That's correct.
Q Okay. And you say that when you got out you took a look at the vehicle to see if there was any damage to the vehicle?
A I did a perimeter check, that's correct.
Q Okay. Did you discover any damage to the vehicle?
A As I recall, there were a few marks on it and that, but I did not feel

them to be tied into what I believed to be an accident at that time, but I did check.

Q You say there was a second person with Mr. Bryan Skripick. Who was that person?

A It was a friend of the gentleman. I don't recall his name right now.

Q All right. But you did a check on him and he came back to be clean, no warrants or any reason to arrest him?

A That's correct.

Q Now, didn't he in fact ask to be able to take Bryan Skripick's car?

A He might have asked, but he was in the same state of potential intoxication from the ability to drive as the other, as I recall, and the status check on him was he did not have driving privilages.

Q Well, you have a copy of that status check?

A No, I would not have it.

Q Okay. So you're saying the thing came back he didn't have driving privileges?

A I think I might be incorrect, but from the standpoint of the alcohol

consumed by the two of them I felt neither was in a potential position to be able to drive.

Q So you told him he couldn't take this car. Now, did Bryan also say, "I want to give him the keys. Let him take the car with him."?

A No.

Q Bryan didn't say that?

A No.

Q You didn't charge this person with intoxication or disorderly conduct?

A Which person?

A Kevin Bruce, I guess, the one who was the passenger.

A No, I advised him where a coffee shop was and made a suggestion that he go have a cup of coffee.

Q What was the necessity to take the vehicle into custody of the Maumee Police Department?

A Because the subject was arrested on a Toledo warrant, and once I arrest a subject I'm responsible for the car and its contents, and it's normal procedure that we then call a tow.

Q Now, do you have written procedures and guidelines in the City of

Maumee regarding that for the police department?

A Yes, we do, written procedures.

Q And do you have any of those with you today?

A No, I don't.

Q And relate to us procedures in regard to impoundment of motor vehicles.

A Excuse me? I missed the first part.

Q Paraphrase what those procedures require.

A Well, I've been with the department over 11 years now, and I just know that when we arrest somebody we call for a tow, a police tow, and it's held in police compound because we, the officers who place that subject under arrest, are now responsible for those contents.

As far as a section number or anything like that, I couldn't quote you that. I just know from 11 and a half years of doing police work in Maumee that's how it has always been done.

Q Then you don't really recall whether in fact there is a written procedure that says you will do it that way, it's just the way it's always been done?

A To the best of my knowledge in eleven and a half years. When I went through training there was some procedure on it.

Q Does that procedure say anything -- or are you given any discretion, to your knowledge, as to whether you can leave that vehicle in the accompanyment of another person present in the vehicle, or is there any discretion given to you in regard to that?

A As far as if I were to turn the vehicle over to somebody one I've arrested him?

Q Sure, other persons in the vehicle once the driver is arrested.

A If he were the owner of the vehicle I might have the discretion to be able to turn it over to a fellow owner of the vehicle. If he was married and his wife were there, that would be my judgment call then, but to turn the car over, I would never turn that car over to somebody who was not registered on the registration as being the owner of the car, no, I would not, even if it were a friend.

Q Was this vehicle in a position where it was unlawfully parked?

A Where it was sitting in the street, that's correct.

Q It was?

A Yes, it was, in the middle of the roadway in front of a school.

Q When you stopped this car you had no knowledge of any misdemeanor traffic offense occurring in your presence?

A That's correct. I strictly stopped him based upon the report from the dispatcher.

Q How long did this stop take before your backup arrived?

A I would say maybe we're talking five to six minutes maybe, maybe less.

Q He wasn't free to leave the area once you had stopped him and started asking him questions, is that correct?

A No, he was not at that point in time free to leave. We were discussing whether or not he had been involved in a hit-skip, and I was questioning his passenger also, comparing stories of the two as to where they had been and where they were headed.

Q Well, up to the time that you asked the driver for a copy of his

driver's license, did you have any evidence that a hit-skip in fact had occurred other than this radio broadcast?

A No, I wouldn't have, because at that time it was dark, and until I had gotten out of my vehicle and physically started going around and looking at the automobile for damage there was no way I could have ascertained that.

Q When you asked the -- okay. What did you do when you got out of your police vehicle and went up to this car that you had stopped and pulled to the side?

A I asked for identification, driver's license, and explained why I was there.

Q Did you also take a brief look at the outside of the vehicle as you came up to it?

A The only side I would have seen would have been the driver's side.

Q So then you asked him for what?

A Identification.

Q Okay. And you asked the passenger as well?

A Yes.

Q What crime was the passenger

suspected of?

A None whatever. I just wanted to know who he was.

Q Then what did you do after they gave you their license?

A Did a check on them. I gave the information back to the dispatcher.

Q Then what did you do?

A Started looking at the outside of the vehicle. I don't recall, but at some point in time I know the defendant was with me, because I did find some areas on the car that had either hit or struck or something and questioned him in regards to the marks that I had found. The information on the broadcast did not specify where on the car the subject would have been run down, so I know I was totally in the dark about that.

Q At some point after that you got another radio call about the warrant being out for the defendant?

A Yes.

MR. ROGERS: All right, I have nothing further.

MR. CONKLIN: Nothing further of this witness, Your Honor.

THE COURT: You may step down, Officer Boggs.

THE WITNESS: Thank you.

MR. CONKLIN: Call Officer Lindsey.

- - -

ROBERT LINDSEY

Having been first duly sworn, as provided by law, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CONKLIN:

Q Please state your name for the record.

A Robert Lindsey.

Q And where are you currently employed?

A City of Maumee.

Q And in what capacity do you serve with the City of Maumee?

A Police officers.

Q And how long have you been employed in that capacity?

A About five years.

Q And were you so - -

MR. ROGERS: Your Honor, before we continue on further, I guess I would like a separation of

witnesses.

MR. CONKLIN: Okay. I have no intention of calling any further witnesses that may be involved in trial, but if you'd like them separated --

MR. ROGERS: Yes, please.

THE COURT: All right, the motion will be granted. All those who are in the courtroom who anticipate being called as witnesses either in the balance of this hearing or in the trial, please depart the courtroom, except for the chief investigating officer, and please make yourselves available in the lobby on the fourth floor out here in order that you might be called if needed as witnesses in this hearing.

MR. CONKLIN: I would indicate that Detective Ferraro will be remaining as a representative of the - -

THE COURT: All right.

MR. CONKLIN: -- Maumee Police Division.

THE COURT: Proceed.

BY MR. CONKLIN:

Q And were you so employed in your capacity as a police officer on November the 1st of 1986?
A Yes, I was.
Q And what shift were you working that day?
A Midnight shift, 11:00 to 7:00 A.M.
Q And what were your duties that day?
A Patrolman.
Q And were you in an automobile?
A Yes, I was.
Q And were you working with anyone?
A No, I was not.
Q And if I could direct your attention to between the hours of say 2:30 and 3:00 o'clock in the morning, what, if anything, unusual occurred at that time?
A Well, I had just backed up Officer Boggs on a traffic stop.
Q Okay. And do you recall where that was?
A Yes, in the hundred block of West Broadway.
Q And that was in Maumee?
A Yes, sir, it was.

Q Okay. And could you describe what you saw when you arrived upon the scene?

A Well, at that time Officer Boggs was behind another vehicle, a Chevy Citation I think it was, and the defendant was out of the vehicle at the time.

Q Okay. And when you say the defendant, who are you referring to?

A The subject in the black leather jacket.

Q Okay.

A Sitting right there.

Q Okay. And that was the individual who was outside of the car with the police officer?

A Yes.

Q And what happened next?

A Well, at the time Officer Boggs was waiting for confirmation on a warrant from Toledo when I pulled up.

Q I see. Then what happened?

A Okay. And I got out of the car, and Officer Boggs began to pat the driver down.

Q Okay. And the driver being the individual you've identified earlier?

A Yes.

Q What happened next?
A Officer Boggs found a bottle of rush on him and also a small -- well, what was believed to be a joint.
Q Okay. And what happened after that?
A Well, we waited. Officer Boggs crumpled up the joint and took the -- placed the bottle of rush in his pocket, and then we waited for confirmation on the warrant.
Q Okay. Did that eventually come?
A Yes, it did.
Q What happened after that?
A I went with Officer Boggs and placed the defendant inside the back seat of Officer Boggs' car.
Q Okay. And did Officer Boggs transport the defendant to the best of your knowledge?
A Yes, he did.
Q Now, what happened to the defendant's automobile?
A Well, during this time Sargeant Zink had showed up on the scene also.
Q I see.
A And as we were placing the defendant in his vehicle Sergeant Zink

started the -- the search of the vehicle.
Q Okay.
A The front and back seat.
Q Okay. And for what purpose was the search being conducted, if you know?
A Well, it's customary that we do it, because we've had alot of problems where defendants later on say, "Well, I had this in my car and had this in my car and it's -- it's not there." So, we try to do a kind of like an inventory search, just for our minds, in case someone later says they had this in their car, and then we can say no, he didn't.
Q Okay. And the vehicle was going to be towed?
A Yes, it was.
Q And impounded by the police, is that correct?
A Yes.
Q And you wanted to search the car to ascertain what the contents of the vehicle was?
A Yes.
Q And what happened next?
A I walked back after I placed the defendant in Officer Boggs' car, and as he was leaving I walked back up to

the -- to the suspect's vehicle, and Sergeant Zink said -- we decided to look in the trunk.

Q Okay.

A He had already looked in the front and back seat.

Q Okay. What kind of vehicle was this, was there a traditional hood, passenger compartment, trunk?

A No, it was a hatchback.

Q Okay. And so when you refer to the trunk you're referring to opening the hatch area?

A Yes.

Q What happened next?

A We took the keys, opened up the trunk, or the hatchback, and as we did we noticed several things; a brown -- or a dark, grey suitcase, some gifts on the right-hand side, and on the left of the suitcase was a yellow bag and also a clear plastic bag, which appeared or looked to have a green vegetable substance I believed to be marijuana.

Q Okay. And were those items seized at that time?

A Yes, they were.

Q Okay. And did you inventory the

vehicle further to ascertain what the contents of the vehicle was?

A Yes.

Q Okay. Was the vehicle eventually towed?

A Yes, it was.

Q Okay. Were you present during any sort -- or during any time that Officer Boggs was having a conversation with the defendant?

A Yes.

Q Okay. And could you relate what, if anything, was said at the time that you were there?

A Nothing out of the unusual that was said.

Q Okay. And when you searched through the vehicle you weren't specifically looking for contraband, were you?

A No.

Q Let me ask you this; did you ever hear any radio broadcasts that evening?

A Yes, I did.

Q Okay. Did you hear any referring to a pedestrian hit-skip accident occurring in Toledo?

A Yes.

Q Okay. And do you recall what the contents of that particular radio broadcast was?

A Well, it came from Toledo through a C.B. report that a pedestrian had been struck; that there was a van following the suspect vehicle and -- and they were heading towards Maumee on the Trail.

Q Okay. Did they give any indication as to when this would have occurred?

A Well, to our understanding, it just had happened.

Q Okay. Did they indicate whether or not -- did they give any further description of the automobile and van involved in reference to license plates and description?

A They gave the license plate of the vehicle, I know the van was a -- was a brown two-tone.

Q Do you recall anything else concerning that original broadcast?

A Not that I can recall.

Q Okay. When the vehicle was on the street and you were about to have it towed and impounded, do you recall whether or not it was in a position where

it was legally or illegally parked?

A Well, it was not legally parked. It was on the right-hand side of West Broadway and there is no parking on that side, plus it was on the street.

MR. CONKLIN: Okay. I have nothing further of this witness, Your Honor.

THE COURT: Mr. Rogers.

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CROSS EXAMINATION

BY MR. ROGERS:

Q Detective Ferraro -- Detective Lindsey, excuse me.

A Yes.

Q That is Officer Lindsey?

A Officer Lindsey.

Q Okay. When you drove up you said the defendant was out of the vehicle?

A Yes.

Q Where was the passenger of the vehicle?

A He was still in the vehicle at the time.

Q Okay. And you said Officer Boggs was still waiting on confirmation

on this warrant?

A Yes.

Q And began to pat down the defendant?

A Yes.

Q While you were present?

A Yes.

Q Okay. At some point you must have been present when this passenger was available to take the automobile away. Did you hear that conversation?

A No, I didn't hear the request, but if I recall he was in no shape to be driving the vehicle, in my estimation he would be in no shape to be asking to drive the vehicle.

Q So were you present when Officer Boggs allegedly told him to go get a cab?

A Well, we had asked him if we could give him a lift to the city limits. If I recall, I think he was from the East Side and it would have been down the Trail at Detroit Avenue, and he stated that he was oging to take a walk, find his own way home.

Q Had you, or anyone that you observed, given this person a standard

finger to nose test, walk a straight line test, anything along that type of line?

A No. He was walking okay, he wasn't falling down. We wouldn't have let him leave if he was that bad shape, but he -- I don't think he wanted to take the chance of driving the vehicle.

Q You're saying you didn't hear him ask to have the keys to be able to take that vehicle?

A No.

Q Now, you say Sergeant Zink showed up?

A Yes.

Q And he was the one that immediately started the inventory while -- what were you doing while he was doing the inventory of the front and back seats?

A We were waiting, and once confirmation came I assisted Officer Boggs in placing the suspect in his vehicle, and this was after we had already told the passenger that he could -- he could walk.

Q Okay.

A Sergeant Zink then went ahead

and searched the front and back seat.

Q Okay. then you said Sergeant Zink came on up and said something about checking the trunk. What was it that he said?

A Well, he says -- well, as far as I can recall, he says, "Do we have the keys? Let's check the trunk."

Q He said what?

A He says, "Let's check the trunk."

Q Did he say, "Let's check the trunk to see if there's any drugs or any marijuana there."?

A No.

Q And did you have the keys with you?

A No, they were in the -- they were in the column.

Q In the ignition?

A Yes, there you go.

Q And if he would have already checked the front seat and the back seat, why did he ask you to assist him to check the trunk?

A Well, I had came back up. I'm not sure.

Q And do you know why Sergeant Zink was checking the trunk?

A Well, probably for an inventory search.

Q You say probably?

A Yes.

Q But do you know why he was checking the trunk?

A Well, no. We always -- I always check the trunk for an inventory search, so I presumed he would be doing the same thing.

Q Do you check the -- have you ever checked the trunk of a vehicle out on the street without the consent of the driver of the automobile?

A Yes.

Q Okay. And how many times have you done that?

A Well, I can't --

MR. CONKLIN: Your Honor, I'm going to object. It's not relevant to --

THE COURT: Sustained.

THE WITNESS: Well, I've had --

THE COURT: You don't have to answer the question, officer.

BY MR. ROGERS:

Q You say you were present during the conversation with the defendant and nothing out of the usual was said?

A No.

Q What do you recall about that conversation?

A Nothing out of the ordinary. I can't recall.

Q Now, the only thing that you had heard over the radio was that Toledo was saying that they had a C.B. report that said there was hit-skip accident in the City of Toledo?

A Yes, and they were heading towards Maumee.

Q Okay.

A And that a brown van was following the vehicle.

Q Are you aware of any written police of the Maumee Police Department regarding searches of vehicles after the driver's been arrested?

A No, I can't recall any procedure.

MR. ROGERS: Okay. Nothing further.

THE COURT: Mr. Conklin?

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REDIRECT EXAMINATION

BY MR. CONKLIN:

Q Officer, as far as you were concerned, you were conducting a search of the vehicle for the purpose of an inventory, is that correct?

A Yes.

Q Sergeant Zink never told you otherwise, did he?

A No.

MR. CONKLIN: I have nothing further, Your Honor.

THE COURT: You may step down, Officer Lindsey.

MR. CONKLIN: The State would call no further witnesses at this time, Your Honor.

THE COURT: The case is with the defense, Mr. Rogers.

MR. ROGERS: Yes, Your Honor. I would call the defendant for purposes of this hearing only, to the -- well, I won't call the defendant in this case. I don't think I need to.

THE COURT: All right. Are you going to present other witnesses then, Mr. Rogers?

MR. ROGERS: No, Your Honor, we have no witnesses to present.

THE COURT: All right.

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I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS A TRUE AND COMPLETE TRANSCRIPT OF THE PROCEEDINGS HAD IN THE CASE OF THE STATE OF OHIO -VS- BRIAN SCOTT SKRIPICK, CASE NO. CR86-6942 ON DECEMBER 22, 1986.

/s/ David O'Neil

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